

RECEIVED

JAN 25 1995

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Matter of)

Implementation of Section)
309(j) of the Communications)
Act - Competitive Bidding)

PP Docket No. 93-253

DOCKET FILE COPY ORIGINAL

**COMMENTS OF CALCELL, INC.
ON AUCTION OF BLOCK D, E, AND F
BROADBAND PCS LICENSES**

CalCell, Inc. ("CalCell"), by its attorneys, hereby submits its comments on the issues raised in the December 23, 1994, Public Notice concerning the auction of Block D, E, and F broadband PCS licenses.

I. INTRODUCTION

CalCell is a minority-owned small business that intends to participate in the broadband PCS BTA auctions. For the past several years, CalCell has been involved in the development of broadband PCS, both by submitting comments to the Commission in some of its earliest PCS proceedings and by implementing its business plan. CalCell is a serious designated entity that intends to build and operate PCS systems.

CalCell submits these comments to present its views on the questions posed in the Commission's December 23, 1994 Public Notice concerning the Block D, E, and F broadband PCS auctions.

**II. THE BLOCK D, E, AND F LICENSES SHOULD
BE AUCTIONED AT ONCE IN ONE AUCTION**

CalCell believes strongly that the Block D, E, and F licenses should be auctioned at once in one auction. As the

No. of Copies rec'd
List ABCDE

2414

Commission has recognized in other contexts, there is a substantial need in broadband PCS for licensees to aggregate spectrum up to the limits set by the Commission. The economies of scale in operating PCS systems make it especially imperative that designated entities -- new entrants to the telecommunications marketplace -- be able to aggregate spectrum.

Designated entities that do not win 30 MHz licenses in the Block C auctions should be given an opportunity to aggregate 30 MHz licenses on Blocks D, E, and F efficiently and expeditiously. The Commission's proposal to auction the Block D, E, and F licenses at once, if adopted, would present just such an opportunity, and, therefore, would fulfill the Commission's statutory duty to encourage the participation of designated entities in the auctions. See U.S.C. § 309(j).

There will be no corresponding prejudice to any party as a result of auctioning the D, E, and F licenses at once. Non-designated entities will have the same opportunities as before, and designated entities who win 30 MHz Block C licenses will likewise not be disadvantaged.

III. INSTALLMENT PAYMENTS SHOULD BE AVAILABLE TO DESIGNATED ENTITIES BIDDING FOR BLOCK D AND E LICENSES

The Commission has made a public interest finding that a significant barrier for most small businesses, especially minority-owned small businesses, that qualify to bid for Block C and F BTA licenses is access to capital to compete against larger firms. See, e.g., Fifth Report and Order, FCC 94-178, released

July 15, 1994 at ¶¶ 135-137, 93-112. The Commission adopted its installment payment plan to give minority-owned small businesses and others the chance to overcome this barrier in bidding for 30 MHz and 10 MHz BTA licenses on Blocks C and F. See id.

This same rationale applies perforce for minority-owned small businesses bidding for the 10 MHz licenses on Blocks D and E without an installment payment plan, it will be very difficult for minority-owned small businesses to attract capital to acquire 10 MHz BTA licenses, no matter the particular block on which any given license happens to lie.

In fact, there is an even greater need for installment payments for minority-owned small business bidding for Block D and E licenses, because that bidding on those blocks will be head-to-head against the larger firms, particularly against the firms with cellular interests that are limited to 10 MHz in their service areas. Designated entities need the installment payments to have a fair chance in that head-to-head competition, and the public interest will be furthered by this intense competition both in terms of higher auction revenues and ultimate consumer welfare.

The only way to achieve the Commission's stated goal of encouraging the entry of designated entities in the BTA's as "strong, long-term bona fide competitors" is to assist them in overcoming their difficulties in attracting capital by providing for installment payments on all BTA licenses. Fifth Report and Order at ¶ 112. There is no rational basis for distinguishing

between Blocks D, E, and F in this regard. The Commission must "directly address the significant barriers that smaller businesses face in accessing private financing," whenever the smaller business is bidding for a BTA license, no matter the particular block. Fifth Memorandum Opinion and Order, FCC 94-285, released November 23, 1994 at ¶ 101.

Thus, the terms of the installment payments for Blocks D and E should be exactly the same as those for Blocks C and F -- that is, the terms set forth in § 24.711(b) of the Commission's Rules. There is no logical reason to impose any different terms.

Similarly, the eligibility rules for installment payments on Blocks D and E should be the same as the eligibility rules for installment payments on Blocks C and F in § 24.711(b). Installment payments on Blocks D and E should only be available to entities that would qualify for installment payments on Blocks C and F. There is no basis for awarding installment payments to the large, existing players in the communications industry. As on Blocks C and F, installment payments on Blocks D and E should be reserved for the smaller firms, with the best terms for the small, minority-owned or female-owned firms, that face difficulties in attracting capital to compete head-to-head against the larger firms.

**IV. THE BLOCK D, E, AND F AUCTION SHOULD BE
HELD AS QUICKLY AS POSSIBLE AFTER THE
BLOCK C AUCTION**

CalCell urges the Commission to move forward as quickly as possible with the Block D, E, and F auction, after the close of

the Block C auction. Timing to market is critical to PCS, as it was in cellular and other communications technologies. For a new entrant, such as a designated entity, timing to market is of paramount importance; a new entrant must build a customer base from scratch. If customers are already locked up by licensees on other blocks who had a head start from the Commission, it will be very difficult, if not impossible, for any new entrant to build such a customer base.

In cellular licensing, there was timing disparity in issuing licenses from block to block, which the Commission tried with mixed success to ameliorate with its head start policy. But, in PCS, there is no head start policy. Thus, it is very important that there not be any delay in licensing any of the blocks. Blocks D, E, and F should not bring up the rear if they are to be a source of viable competition. Rather, the Commission should hold the Block D, E, and F auctions immediately after the Block C license, and issue the Block D, E, and F licenses expeditiously.

V. CONCLUSION

CalCell respectfully asks the Commission to: 1) auction the Block D, E, and F licenses at once; 2) provide for installment payments for qualifying designated entities winning Block D, E, and F licenses; and 3) hold the Block D, E, and F auction immediately after the Block C auction.

Respectfully submitted,



William H. Crispin
Dean R. Brenner
CRISPIN & BRENNER, P.L.L.C.
901 15th Street, N.W.
Suite 440
Washington, D.C. 20005
(202) 828-0155

Attorneys for CalCell, Inc.

Dated: January 25, 1995

CERTIFICATE OF SERVICE

I, Dean R. Brenner, do hereby certify that a true and correct copy of the foregoing "COMMENTS OF CALCELL, INC. ON AUCTION OF BLOCKS D, E, AND F BROADBAND PCS LICENSES" were served by hand on this 25th day of January, 1995, to:

Honorable Reed C. Hundt
Chairman
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

Honorable James H. Quello
Commissioner
Federal Communications Commission
Room 808
1919 M Street, N.W.
Washington, D.C. 20554

Honorable Andrew C. Barrett
Commissioner
Federal Communications Commission
Room 826
1919 M Street, N.W.
Washington, D.C. 20554

Honorable Rachelle B. Chong
Commissioner
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

Honorable Susan Ness
Commissioner
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, D.C. 20554

William E. Kennard, Esq.
General Counsel
Federal Communications Commission
Room 614
1919 M Street, N.W.
Washington, D.C. 20554

Robert M. Pepper
Donald H. Gips
Office of Plans & Policy
Federal Communications Commission
Room 822
1919 M Street, N.W.
Washington, D.C. 20554

Regina Keeney
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
Room 5002
2025 M Street, N.W.
Washington, D.C. 20554

A handwritten signature in dark ink, appearing to read "Dean Brenner", is written over a horizontal line.

Dean R. Brenner